

#### REMARKS

This paper is in response to the Office Action dated December 16, 2009. Claim 1 is amended hereby without prejudice to the subject matter involved by incorporating certain subject matter of claims 5 and 6. Claims 4 – 6 are canceled without prejudice. Claims 1 and 7 – 13 are in the application upon entry of this amendment. Entry of this amendment, reconsideration and reexamination of the above-identified application are respectfully requested.

Applicant respectfully traverses the rejection of claims 1 and 4 – 12 (now 1 and 7 – 12) under 35 USC §103 as being unpatentable over US patent 6156705 (Mueninghoff) in view of Waltersdorfer et al. (US 5,139,785) and Scher et al. (US 5,332,584).

By way of summary, the presently claimed invention relates to a microencapsulated agrochemical composition comprising an aqueous dispersion of microcapsules that have a mean diameter of less than 2 microns and a total polymer wall concentration of less than 3 % by weight of the total composition having a material encapsulated within the microcapsules that comprises (a) an agrochemical; and (b) a water-insoluble, bioperformance-enhancing adjuvant for said agrochemical which has a Hydrophile / Lipophile balance of 9 or less and is selected from a compound of formula (I) (as shown in claim 1) and (c) a water-immiscible solvent in which both the agrochemical and adjuvant are soluble and wherein the ratio of adjuvant to agrochemical is from 1:50 to 200:1.

The problem that is addressed by the present invention can thus be seen as the provision of a suitable selection of a bioperformance enhancing adjuvant for use with an agrochemical in a microencapsulated composition since such adjuvant materials that have surfactant properties often locate themselves at the oil/water interface during the encapsulation process and can tend to interfere with the microcapsule wall-forming reaction.

The primary reference to Mueninghoff is limited to an adjuvant containing: (a) a fatty alcohol polyalkoxy alkyl ether; and (b) a component selected from the group consisting of nonionic surfactants, anionic surfactants, cationic surfactants, alkyl esters, phytobland mineral oils, water soluble silicone surfactants, fatty acid dialkyl ethers, fatty acid dialkyl carbonates, vegetable oils, and mixtures thereof. However, Mueninghoff is not concerned with microcapsules. One of ordinary skill to whom this document is aimed is not a person skilled in microencapsulation and certainly would be unaware of the technical complications faced during the encapsulation process. More specifically, Mueninghoff contains no teaching or suggestion of selecting a bioperformance

enhancing adjuvant for use with an agrochemical in a microencapsulated composition which adjuvant has a Hydrophile / Lipophile balance of 9 or less and is selected from a compound of formula (I) (as shown in claim 1) and wherein the ratio of adjuvant to agrochemical is from 1:50 to 200:1.

Recognizing the deficiencies of Muenighoff, the Examiner cites Waltersdorfer et al. and Scher et al.. Specifically, the teaching of Waltersdorfer et al. is limited to a pesticide composition containing at least one compound of formula I therein and contains a very general teaching that: "Suitable formulation possibilities are therefore the following: wettable powders (WP), emulsifiable concentrates (EC), aqueous solutions (SC), emulsions, sprayable solutions, oil- or water-based dispersions (SC), suspoemulsions (SC), dusting agents (DP), seed treatment agents, granules in the form of micro granules, granules produced by spraying, coated granules and absorption granules, water-dispersible granules (WG), ULV formulations, microcapsules, waxes or baits".

Likewise, the teaching of Scher et al is limited to a process for the microencapsulation of a substantially water-insoluble liquid material within a porous shell, but is completely silent about adjuvants. There simply is no teaching or suggestion regarding the problem that is addressed by the present invention.

The Examiner has provided no compelling explanation or rationale to draw the facts of the citations together into a *prima facie* case of obviousness for modification of Muenighoff in order to arrive at the present invention. One of ordinary skill in the art would have no reasonable expectation of success that the composition of Muenighoff could be modified by selecting microcapsules from Waltersdorfer and utilize the process of Scher in order to overcome the problem that is addressed by the present invention.

The three documents are directed to differently skilled persons. Each skilled person would read each specific piece of prior art with his common general knowledge. However, a person of ordinary skill does read a specific citation with another specific citation in mind, unless the first causes him to do so or both are part of the matter in his head. There is no reason why a skilled person would make the connections that the Examiner has done. Accordingly, Applicant respectively submits that the combination is actually made as a result of an improper hindsight analysis in view of the present invention. In the absence of the teaching of the present invention, one of ordinary skill would have no reasonable expectation that the teachings of the cited patents

could be combined as suggested by the Examiner in order to arrive at the presently claimed invention.

Reconsideration and withdrawal of the §103 rejection of claims 1 and 4 – 12 (now 1 and 7 – 12) are respectfully requested.

Applicant respectfully traverses the rejection of claim 13 under 35 USC §103 as being unpatentable over Mueninghoff in view of Waltersdorfer et al. and Scher et al., further in view of Roberts (US5580567). The deficiencies of the primary references are discussed above. The teaching of Roberts is limited to a homogeneous, essentially nonaqueous adjuvant composition containing at least one spray oil selected from the group consisting of (a) vegetable oils; (b) fatty acids and blends thereof; (c) esterified fatty acids or blends thereof; (d) saponified fatty acids or blends thereof; (e) N,N-dimethylamide of the formula (f) certain polybutenes, a surfactant in an effective amount to emulsify said composition and a buffering agent in amount sufficient to reduce the pH to below about 7.

In contrast, in accordance with the present invention, the inventor has identified that it is possible to build into microcapsules certain adjuvants without disrupting the sensitive process used to generate those microcapsules, by careful selection of the adjuvants, as defined in amended claim 1. The teaching of Roberts does nothing to address this important aspect of the presently claimed invention. Reconsideration and withdrawal of the 103 rejection of claim 13 are requested.

In view of the foregoing amendments and arguments, a favorable reconsideration and a withdrawal of the § 103 rejection are respectfully requested. Applicant submits that the present claims are allowable over the cited art and respectfully request a Notice of Allowance.

Respectfully submitted,

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